

BEFORE THE BOARD OF MILK CONTROL  
AND THE DEPARTMENT OF LIVESTOCK  
OF THE STATE OF MONTANA

In the matter of the adoption of	)	NOTICE OF PROPOSED
NEW RULES I and II pertaining	)	ADOPTION
to penalties	)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On March 28, 2016, the Board of Milk Control (board) and the Department of Livestock (department) propose to adopt the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on March 14, 2016, to advise us of the nature of the accommodation that you need. Please contact the Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-1929; e-mail: MDOLcomments@mt.gov.

3. The rules as proposed to be adopted provide as follows:

NEW RULE I PENALTIES (1) The penalty provisions of [NEW RULE II] apply to this chapter.

AUTH: 81-23-104, 81-23-202, MCA  
IMP: 81-23-103, 81-23-104, 81-23-202, 81-23-204, MCA

REASON: The board proposes to adopt this rule to ensure consistent penalty provisions under both ARM Title 32, chapter 23, and ARM Title 32, chapter 24.

NEW RULE II PENALTIES (1) Bureau staff must take reasonable administrative actions to assist a person's compliance with applicable law, rules, and orders before the board may impose any of the penalties in (2). If bureau staff cannot secure a person's compliance through administrative action, they must recommend to the board chair that a hearing be scheduled to consider assessment of a penalty.

(2) The board may refuse to grant a license, may suspend a license already granted, may revoke a license already granted, or may assess a civil penalty for any of the following:

- (a) violation of any provision of Title 81, chapter 23, MCA;
- (b) violation of any provision of ARM Title 32, chapters 23 and 24;
- (c) violation of any board order;

- (d) failure or refusal to make required statements or reports; or
- (e) failure to pay license or assessment fees.

(3) Before imposing any of the penalties in (2), the board must provide due notice, a hearing, and due cause for the penalty. The contested case procedure in the Montana Administrative Procedure Act applies to these hearings.

(4) Following a determination of due cause for a penalty, the board may order that a penalty be imposed. In place of suspension or revocation of the license, the board may assess a civil penalty, not to exceed \$500 per day for each daily failure to comply or each daily violation, with a deadline for when the payment is due. A person assessed a civil penalty who fails to pay that penalty immediately when due may be subject to further compliance proceedings for failure to comply with the board's order and will be subject to civil proceedings to collect the civil penalty.

(5) A license revoked for failure to pay an assessment under ARM 32.23.301 when due may be reinstated.

(a) A license revoked for failure to pay an assessment under ARM 32.23.301 when due must be reinstated upon payment of:

- (i) all accrued assessments through the date the license was revoked; and
- (ii) a delinquency fee not to exceed 200% of the amount of all accrued assessments.

(b) An assessment becomes delinquent the day after it was due.

AUTH: 81-23-104, 81-23-202, MCA  
IMP: 81-23-103, 81-23-202, 81-23-204, MCA

REASON: The board proposes to adopt the above-stated rules to provide:

Due process to carry out 81-23-204, MCA, with an emphasis assisting compliance through reasonable administrative actions prior to proceedings that may result in penalties.

Due process to carry out 81-23-202(6), MCA, as amended by the 2015 Montana Legislature with Senate Bill 183, which provides for reinstatement of revoked licenses "upon payment of all accrued assessments and a delinquency fee established by rule."

The proposed penalty rules affect approximately 132 businesses licensed by the Milk Control Bureau. It is not possible to estimate the civil penalties or delinquency fees that potentially may be assessed because the board anticipates that establishment of these rules will serve as a deterrent to violations and that compliance will be achieved through administrative actions in most situations. Additionally, estimating civil penalties is not possible because the proposed rules provide discretion to the board in setting the amount of the penalty.

4. Concerned persons may submit their data, views, or arguments in writing concerning the proposed action to the Executive Officer, Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing

to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov to be received no later than 5:00 p.m., March 18, 2016.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as in 4 above. The written request for a hearing must be received no later than 5:00 p.m., March 18, 2016.

6. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the public hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 14, based upon there being approximately 132 businesses licensed by the Milk Control Bureau.

7. The board and department maintain lists of interested persons who wish to receive notices of rulemaking actions proposed by these agencies. Persons who wish to have their name added to the lists shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the board and department.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The bill sponsor contact requirements of 2-4-302, MCA, do apply and have been fulfilled. The primary bill sponsor of SB 183, Senator Taylor Brown, was contacted by telephone and by e-mail at [taylor@northernbroadcasting.com](mailto:taylor@northernbroadcasting.com) on January 28, 2016.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rules will not significantly and directly impact small businesses.

/s/ W. Scott Mitchell  
W. Scott Mitchell  
Chair  
Board of Milk Control

/s/ Michael S. Honeycutt  
Michael S. Honeycutt  
Executive Officer  
Department of Livestock

/s/ Cinda Young-Eichenfels  
Cinda Young-Eichenfels  
Rule Reviewer

Certified to the Secretary of State February 8, 2016.